IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES VON BERNUTH, JOHN HERKLOTZ, an individual, Defendants.	)	CIVIL DIVISION No.: 00-CV-2041

Response to Motion for *Nunc Pro Tunc*
Certification that Entry of Judgment is Final Pursuant to F.R.C.P. 54(b)

AND NOW, comes Defendant John Herklotz, by and through his attorneys, Burns, White & Hickton, LLC, and files this Response to Motion for *Nunc Pro Tunc* Certification that Entry of Judgment is Final Pursuant to F.R.C.P. 54(b), of which the following is a statement:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted in part. It is admitted that the Counterclaims filed by von Bernuth and Plaza were not expressly dismissed in the Orders. The balance of the averments are legal conclusions to which no response is required. To the extent that a response is deemed necessary, Defendant Herklotz is without knowledge or information sufficient to form a belief as to the truth of the averments.

8. The averments in paragraph eight of WRS's Motion are a series of speculative statements about what this Court may or may not do and/or what this Court has the authority to do. Under the circumstances, Defendant Herklotz considers these statements to be legal conclusions to which no response is necessary. To the extent that a response is deemed necessary, Defendant Herklotz is without knowledge or information sufficient to form a belief as to the truth of the averments.

9. Admitted.

10. Admitted in part, denied in part. The averments in paragraph ten of WRS's Motion are admitted except the averment to the effect that WRS's claims against Herklotz were "fully litigated." On the contrary, although Defendant Herklotz sought to "fully litigate" the claims against him, this Court granted summary judgment. To the extent that summary judgment was granted, Defendant Herklotz does not believe that these claims can be considered to have been "fully litigated," although there were full and complete proceedings appropriate to the summary judgment phase of the case.

11. Admitted to the extent that Defendant Herklotz believed at the time that the summary judgment orders were entered against him that those orders were final and appealable. Defendant Herklotz does not take any position at this time as to whether the *Curtiss-Wright* case cited by WRS applies to this matter and/or its current procedural posture.

12. Denied as stated. Defendant von Bernuth's Motion to Remand raises complex procedural issues and includes a request for alternative relief. Therefore, Defendant cannot admit a general averment that von Bernuth's Motion "has no impact on the separate Judgment WRS obtained against Herklotz."

13. Admitted.

14. Defendant Herklotz is without knowledge or information sufficient to form a belief as to the truth of the averments. Defendant Herklotz believed when he filed his Notice of Appeal that the summary judgment orders entered against him were final and appealable at that time. Therefore, Defendant Herklotz has not researched the cited cases.

15. Admitted in part, denied in part. Defendant Herklotz believed when he filed his Notice of Appeal that the summary judgment orders entered against him were final and appealable at that time. Therefore, it is admitted that, as of the date that the Court's Order dated February 20, 2007 was entered, it did not appear that there was any reason to delay the entry of final judgment as to Defendant Herklotz. Since this Court's Order dated February 20, 2007 was entered, Defendants von Bernuth and Parkinson have placed additional facts on

this Court's record and von Bernuth has placed many, if not all, of the same facts on the record in the United States Court of Appeals for the Third Circuit (Court of Appeals Case Number 07-1712). Defendant Herklotz has also brought those facts to the attention of the Court of Appeals by virtue of the Reply Brief that he filed with that Court. Due to the procedural complexity of the matters pending in this Court and in the Court of Appeals, Defendant Herklotz is constrained to deny WRS's averment to the extent that it states that there is not, on the current state of the record, a "'just reason for delaying the entry of final judgment' as to Herklotz."

WHEREFORE, under the complex procedural circumstances presented by these matters, and because he believed at the time that the orders that he appealed from were final and appealable, Defendant John Herklotz takes no position with respect to whether the *nunc pro tunc* relief sought by WRS is necessary.

Respectfully submitted,

By: *John P. Sieminski*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Response to Motion for *Nunc Pro Tunc* Certification that Entry of Judgment is Final Pursuant to F.R.C.P. 54(b)** has been served on counsel listed below by electronic mail on this 26th day of November, 2007:

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